

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-204682.2

DATE: July 12, 1982

MATTER OF: L. W. Sloan Builders, Inc.

DIGEST:

1. General protest against cancellation of IFB filed with either agency or GAO more than 10 working days after fact of cancellation was or should have been known is untimely.
2. Protest is untimely where protester waits more than 3 months after notice of cancellation to either protest generally or request further information which could form the basis for a specific protest.
3. Bidder is not an interested party where, having failed to bid resolicitation and untimely protested cancellation of preceding solicitation, it lacks a direct and substantial interest with regard to the ultimate award under the resolicitation.

L. W. Sloan Builders, Inc. (Sloan), protests the Air Force's cancellation of solicitation No. F38606-81-B-0022 (IFB-22) and any award under resolicitation No. F38606-82-B-0017 (IFB-17), both of which were issued by Myrtle Beach Air Force Base, South Carolina, for renovation of 27 military family housing units and the repair of a fire-damaged unit.

By letter of December 27, 1981, Sloan was advised of the cancellation of IFB-22. Sloan was aware of the resolicitation of the requirement under IFB-17, having purchased a copy of the specification from the Air Force, but Sloan elected not to bid the resolicitation.

Sloan's protest of the cancellation of IFB-22 is untimely and Sloan's protest of IFB-17 is dismissed because Sloan is not an interested party.

It is not clear from Sloan's protest that Sloan has obtained a sufficient understanding of the reasons behind the cancellation of IFB-22 to form more than a general objection to it. However, it was not until April 21, 1982, more than 3 months after notice of the cancellation, that Sloan attempted to file a protest with the Air Force. Apparently, the Air Force returned the protest unanswered. Even if it is assumed that Sloan's April 21, 1982, protest was intended to serve both as a protest and as an attempt to secure information upon which to base a specific protest of the cancellation, it is untimely because Sloan failed to diligently pursue either its general protest of the cancellation or its requirement for the specific reasons why the Air Force was canceling IFB-22.

Our Bid Protest Procedures require that bid protests must be filed no later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(b)(2) (1982). This applies to protests filed initially with the procuring agency, 4 C.F.R. § 21.2(a) (1982), unless the agency imposes a more stringent time limit. Thus, even if the April 21, 1982, letter of protest to the Air Force had been accepted by the Air Force, it would have been untimely as a general protest of the December 27, 1981, notice of cancellation. If, on the other hand, it is viewed as an attempt to secure information upon which to base a protest of the cancellation, it is still untimely. We have held that a protest is untimely where the protester on notice of agency action (such as an award) waits more than a month after receipt of such notice to request information that forms the basis of its protest. Entron, Inc., B-202397, August 12, 1981, 81-2 CPD 128.

Sloan is not eligible as an "interested party" under our Bid Protest Procedures because its failure to submit a bid under IFB-17 renders it ineligible for award. See Bay Ridge Ambulance & Oxygen Service, B-204018.3, September 10, 1981, 81-2 CPD 211. In determining whether a protester is sufficiently interested in a particular procurement, we consider the protester's status in relation to the procurement, the nature of the issues involved and how these circumstances show the existence of a direct and/or substantial economic interest on the part of the protester. Bay Ridge

Ambulance & Oxygen Service, supra. Sloan, although ineligible for award, is protesting the possibility that the Air Force may award the contract to the apparent third low bidder at a price higher than that which Sloan bid under the canceled IFB-22. In our view, Sloan lacks the requisite interest for our consideration of its protest under IFB-17 since our consideration and sustaining of Sloan's untimely protest of the cancellation of IFB-22 is a necessary prerequisite to Sloan being considered for any award.

The protests are dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel